IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos. 5581 to 5583 of 1998
With
CROSS-OBJECTIONS NO. 96 to 98 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SPL.LAQ OFFICER

Versus

PARATAPBHAI MAGANBHAI

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Appearance:
MR AY KOGJE, A.G.P. for appellants
MR AJ PATEL with MR JAYESH M PATEL
for Respondent/s - original claimants.

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CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 17/07/2003

ORAL COMMON JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

By filing instant appeals under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged legality of common judgment and award dated April 13, 1998, rendered by the learned 2nd Extra Assistant Judge, Kheda at Nadiad, in Land Reference Nos.1248 of 1993 to 1250 of 1993, by which it is held that the claimants would be entitled to compensation at the rate of Rs.13.50 ps.per sq.mt. for their acquired lands. The claimants have filed the above-numbered Cross-Objections wherein their case is that they are entitled to additional compensation of Rs.13.50 Ps. per sq.mt.

2. A proposal was received by the State Government to acquire agricultural lands of village Nanadara, Taluka : Thasara, District : Kheda, for the public purpose of Narmada Main Canal. On consideration of the same, the State Government was satisfied that agricultural lands of village Nanadara were likely to be needed for the said public purpose. Hence, notification under Section 4(1) of the Act was issued, which was published in Government Gazette on November 8, 1989. The land owners had objected to the proposed acquisition. The Special Land Acquisition had forwarded his report to the Sate Government as contemplated by Section 5-A(2) of the Act. On perusal of the report, the State Government was satisfied that agricultural lands of village Nanadara, which were specified in the notification published under Section 4(1) of the Act, were needed for public purpose of Narmada Main Canal. Therefore, declaration under Section 6 of the Act was made which was also duly notified in Government Gazette. Thereafter the claimants were served with notices under Section 9 of the Act for determination of compensation. The claimants had appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.7500/- per Are for irrigated lands. However, having regard to the development which had taken place near the acquired lands as well as fertility of the lands and sale instances, Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.300/- per Are for irrigated lands by award dated September 24, 1992. The claimants were of the view that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they had filed applications under

Section 18 of the Act requiring the Special Land Acquisition Officer to refer the matters to the District Court for determination of adequate compensation. Accordingly, references were made to the District Court which were registered as Land Reference Nos.1248 of 1993 to 1250 of 1993. The case of the claimants in the reference applications was that each claimant was able to raise three crops in a year and having regard to the price of agricultural produce, they were entitled to compensation at the rate of Rs.7500/- per Are i.e. Rs.7.50 Ps. per sq.mt. The case of the appellant was that the compensation was determined by the Special Land Acquisition Officer after taking into consideration the crop pattern as well as prevailing price of agricultural produce and, therefore, the claimants were not entitled to higher compensation as claimed in the reference applications.

3. Upon rival assertions of the parties, necessary issues for determination were raised by the reference Court at Exh.8. On behalf of the claimants, following evidence was adduced in support of the claim advanced in the reference applications to the effect that they were entitled to compensation at the rate of Rs.7.50 Ps. per sq.mt.; (1) certified copy of deposition of Mohanlal Parshottamdas, who was examined on behalf of the acquiring authorities in L.A.R.No.356/1994 at Exh.13; (2) detailed data prepared by expert Mohanlal at Exh.14, (3) Krishi Jivan Golden Jubilee Magazine, on the basis of which expert Mohanlal had prepared his report at Exh.15, (4) xerox copy of the payment order for the acquired well of village Vanghroli, (5) deposition of Pratapbhai Maganbhai Exh.17, (6) written arguments at Exh.23, (7) Village Form No.7/12 at Exhs.25 to 27, and (8) price list of agricultural produce issued by Kapadwanj Taluka Produce Market Committee for the years 1989-90 and 1990-91.

4. On behalf of the appellants, none was examined and only written arguments were submitted at Exh.22. On the basis of the evidence produced by the claimants, the reference Court held that in absence of sale deeds and opinion of experts, it was incumbent upon the Court to determine market value of the lands acquired on yield basis. The reference Court considered types of the crops which were being raised by the claimants, and held that the claimants were raising crops having two patterns, viz. some of the claimants were cultivating crops of cotton and millet, whereas others were cultivating crops of paddy and millet. On assessment of the evidence, the reference Court found that the total yield of cotton was

2500 Kgs. per hectare, whereas the price of cotton was Rs.1400/- per 100 Kgs. and, therefore, the income derived by the claimants from sale of cotton was Rs.25,000/- per hectare. As far as crop of millet is concerned, the reference Court held that the average minimum yield of millet was 3000 Kgs. per hectare, whereas its price at the relevant time was Rs.250/- per 100 Kgs. and, therefore, the income derived by the claimants from sale of millet was Rs.7500/- per hectare. In view of the above referred to conclusions, the reference Court held that as per first pattern of crop, the claimants were getting total yield of Rs.32,500/- per hectare.

5. The reference Court thereafter considered second pattern of crop and found that minimum yield of paddy crop was 4000 Kgs. per hectare, whereas its price at the relevant time was Rs.350/- per 100 Kgs. and that the claimants were deriving income of Rs.14,000/- per hectare from sale of paddy. In view of its conclusion that income derived by the claimants from sale of millet was Rs.7500/- per hectare, the reference Court adopted the same figure while determining income based on second pattern of the crop. Thus, so far as second pattern of crop is concerned, the reference Court held that the total yield was of Rs.21,500/-. In order to derive average yield of two patterns of crops, the reference Court added income derived by the claimants from second pattern of crop to the first pattern of crop, and further held that the average yield was Rs.27,500/- per hectare. In view of decision of the Supreme Court in State of Gujarat & Ors. v. Rama Rana & Ors., 1997(3) G.L.R. 1954, the reference Court deduced that 50% should be deducted towards costs for raising crop etc. and held that the income derived by the claimants on yield basis was Rs.13,750/-per hectare i.e. Rs.1.35 Ps.per sq.mt. The reference Court further held that market price should be capitalized by adopting multiplier of 10, and came to the conclusion that market price of agricultural lands of village Nanadara was Rs.13.50 Ps. per sq.mt. by impugned Award, which has given rise to instant appeals.

6. Mr.A.Y.Kogje, learned advocate of the appellants, contended that except bare words of the claimants, no contemporaneous evidence was produced by the claimants on record in support of their claim relating to annual yield and, therefore, the impugned judgment should be set aside. It was claimed that the deposition of a witness examined in another case should not have been considered in the present cases without verifying its contents and, therefore, the appeals filed by the acquiring body and

the State Government should be accepted. What was maintained on behalf of the appellants was that nothing was produced on record of the case by the claimants to establish that facility of irrigation was available to the acquired lands and, therefore, market value determined by the reference Court, which is on higher side, should be set aside. The learned counsel of the appellants emphasised that the method adopted by the reference Court for determining market value of the lands acquired being erroneous, the appeals should be allowed.

7. Mr.A.J.Patel, learned senior counsel of the claimants, contended that necessary evidence having been produced by the claimants in support of their claim based on annual yield, it is wrong to contend that the Award is based on no evidence and, therefore, the appeals should be dismissed. It was asserted on behalf of the claimants that the appellants having not objected to the deposition of the expert being read as evidence in instant cases, are not entitled to raise objection at this stage and, therefore, the same should not be entertained by this Court. It was further pointed out that having regard to the convincing evidence led by the claimants, the reference Court should have accepted the case of the claimants that the average minimum yield of cotton was 4000 Kgs. per hectare, whereas that of millet was 4000 Kgs. per hectare and minimum yield of paddy crop was 5500 Kgs. per hectare, and determined compensation payable to the claimants on that basis. According to the learned counsel of the claimants, the compensation determined by the reference Court is contrary to the evidence on record and, therefore, Cross-Objections filed by the claimants should be allowed by holding that they are entitled to additional compensation at the rate of Rs.13.50 Ps. per sq.mt.

8. We have considered the submissions advanced at the Bar and documents forming part of the case. From the record of the case, it is evident that no sale instances were produced by the claimants in support of their cases for higher compensation nor opinion of expert was available to the reference Court to enable it to determine market value of the lands acquired. Under the circumstances, the reference Court was left with no choice, but to determine market value of the lands acquired on yield basis.

9. The plea that the reference Court erred in placing reliance on the certified copy of deposition of expert Mohanlal Parshottamdas, who was examined on behalf of the appellants themselves in L.A.Q.No.356/1994, is

devoid of merits. This question has been examined by the Supreme Court in Kalyan Peoples' Co-operative Bank Ltd. v. Dulhanbibi Aqual Aminsaheb Patil and Ors. AIR 1966 S.C. 1072. The Supreme Court in Para-5 of the reported decision has, inter alia, held as under :

"It is settled law that question of mode of proof is a question of procedure and is capable of being waived and therefore evidence taken in a previous judicial proceeding can be made admissible in a subsequent proceeding by consent of the parties. This applies to proceedings of a civil nature. Whie what is not relevant under the Evidence Act cannot in proceedings to which Evidence Act applies, made relevant by consent of parties, relevant evidence can be brought on the record for consideration of the Court or the Tribunal without following the regular mode, if parties agree. The reason behind this rule is that it would be unfair to ask any party to prove a particular fact when the other party has already admitted that the way it has been brought before the Court has sufficiently proved it. We are therefore of opinion that in the facts of these cases when the appellant Bank not only raised no objection to the Board as last constituted proceeding on the evidence already recorded before the previous Boards, but indeed appears to have invited the Board to act on such evidence previously recorded, the appellant cannot be allowed later on to object to the Board having considered the evidence merely because the decision has gone against it."

If the principle laid down by the Supreme Court in the above quoted decision is made applicable to the facts of the present case, it becomes at once evident that production of certified copy of deposition of expert Mohanlal Parshottamdas, who was examined on behalf of the appellants i.e.acquiring authorities in L.A.Q.No.356/1994 was never objected to by the appellants. The record shows that the same was read in evidence with consent of the parties. It is relevant to notice that the appellants themselves had not led any evidence at all. Further, the impugned Award does not indicate that any objection regarding admissibility of evidence of expert as is raised before this Court, was raised on behalf of the appellants before the reference Court. Under the circumstances, the plea that the reference Court committed error in placing reliance on the deposition of expert Mohanlal Parshottamdas, cannot be accepted.

10. The principles to be borne in mind while determining the market value of the lands acquired on yield basis have been laid down by the Supreme Court in Special Land Acquisition Officer, Davangere v. P.Veerabhadarappa, AIR 1984 SC 774, which are, inter-alia, as under:-

> The function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification unde Section 4(1) and the methods of valuation may be: (1) Opinion of experts; 2) The prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages; and (3) A number of years' purchase of the actual or immediately prospective profits of the lands acquired. Normally, the method of capitalising the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. It can be resorted to only when no other method is available. In valuing land or an interest in land for purposes of land acquisition proceedings, the rule as to number of years' purchase is not a theoretical or legal rule, but depends upon economic factors such as the prevailing rate of interest in money investments. The return which an investor will expect from an investment will depend upon the characteristic of income as compared to that of idle security. The main features are, (1) Security of the income; (2) fluctuation; (3) chances of increase; (4) cost of collection etc. The most difficult and yet the most important and crucial part of the whole exercise is the determination of the reasonable rate of return in respect of investment in various types of properties. Once this rate of return and accordingly the rate of capitalization are determined, there is no problem in valuation of the property. The principle is that the basic factor in applying the method of capitalization of income for ascertaining the market value of property is the rate of return that an ordinary investor would reasonably get on his investment, having due regard to all the relevant circumstances. It

would be unrealistic to adhere to the traditional view of capitalized value being linked with gilt-edged securities when investment in fixed deposits with nationalized banks. National Savings Certificates, Unit Trusts and other forms of Government securities and even in the share market in the shape of blue chips comman a much greater return. More secure the capital and regular the return lesser the rate of interest. Most secured kind of investment is Government securities or deposits with scheduled banks or Unit Trusts or National Savings Certificates.

In regard to investment in agricultural lands there are many imponderables inasmuch as the investor runs a much greater risk than the risk that he runs in investment in housing which consists in vagaries of weather and other uncertainties. There is no security of principal, no liquidity of investment nor any certainty of income. The appreciation of principal or income is also uncertain. The reasons for these is that agricultural lands are not readily transferable under the various land reform legislations e.g. laws relating to ceiling on agricultural holdings under the existing State laws and tenancy laws which place restrictions on transfer of such lands with concomitent danger of effacement of the rights of the absentee-landlords and the creation of rights in the tillers of the soil. In evaluating the rate of return which would ordinarily satisfy an investor in such a property, the risk factor has further to be evaluated. There may be total or partial failure of crops either through failure of rain or drought, or inadequate or excessive rain fall. There may be a failure of crops on account of locust invasion or insects or pests. The cost inputs such as seeds, water, fertiliser, labour charges etc. would vary from year to year. If the overall cost goes up, the income from agricultural produce would be comperatively less. The fluctuations in price of agricultural produce introduce a great deal of uncertainty in regard to the income that can be expected from the sale of the produce. If the yield of the crop in other producing countries is large, or the market prices prevailing in such countries are low, the prices of such agricultural produce in India would go down. In view of these considerations, an investor would expect a much higher rate of return so that the risk factor is

> properly discounted. In the premises, when the rate of return on investment was 8.25% in the years 1971 and 1972 i.e. on the date of notification under S.4(1), a person investing his capital in agricultural lands would ordinarily expect 2% to 3% more than what he could obtain from gilt-edged securities or other forms of safe investment and, therefore, the proper multiplier to be applied for the purpose of capitalization could not, in any event, exceed "ten". However, when the State Government contended that the proper multiple to be applied should be 12 1/2 in computation of the capitalized value of the lands in the cases in question having regard to the rate of return of 8% at the relevant time i.e. on the date of the notification under S.4(1), it must be held that the multiple of 12 1/2 should be applied in computation of the capitalized value of the lands."

Having regard to these principles, this Court has made an attempt to determine market value of the lands acquired. The finding recorded by the reference Court to the effect that it is established by the claimants that they were raising more than two crops in a year, is not challenged in instant appeals. This Court finds that the finding recorded by the reference Court that the claimants were raising more than two crops is borne out from the revenue record produced in the cases. Under the circumstancs, this Court is of the opinion that the reference Court was justified in holding that two patterns of crop were adopted by the claimants and that the market value of the lands acquired was required to be determined on that basis. On the facts and in the circumstances of the case, it is found that the reference Court was perfectly justified in holding that first pattern of crop consisted of cotton and millet, whereas the second pattern of crop consisted of paddy and millet.

11. While assessing the actual yield of cotton and millet as one pattern and paddy and millet as second pattern, this Court has considered the evidence produced by the claimants. So far as the actual yield of cotton is concerned, it was deposed on behalf of the claimants by witness Pratapbhai Maganbhai that the claimants were earning net profit of Rs.1 lac per Bigha because the total yield of cotton was more than 4000 Kgs. per hectare, whereas the prevailing price of cotton at the relevant time was Rs.1400/- per 100 Kgs. Having regard to the material on record, this Court is of the opinion that the reference Court did not commit any error in

coming to the conclusion that the total yield of cotton was 2500 Kgs. per hectare and that the price of the same at the relevant time was Rs.1000/- per 100 Kgs. However, so far as the crop of millet is concerned, it is to be noticed that Exh.14, which is detailed data prepared by expert Mohanlal Parshottamdas would indicate that the yield of cotton was 3500 Kgs. per hectare, whereas it was asserted on behalf of the claimants by witness Pratapbhai Maganbhai that the total yield of millet was 4000 Kgs. per hectare and, therefore, the reference Court was not justified in holding that the minimum yield of millet was 3000 Kgs. per hectare. Having regard to the nature of evidence adduced by the claimants and more particularly cross-examination of the witness examined on behalf of the claimants, this Court is of the opinion that the average minimum yield of millet should be taken to be 3500 Kgs. per hectare. The reference Court has rightly noticed that price of millet at the relevant time i.e. in the year 1990 was Rs.250/per 100 Kgs. Therefore, this Court is of the opinion that yield of millet would be Rs. 8750/- per hectare.

12. So far as second pattern of crop is concerned, the evidence of expert Mohanlal Parshottamdas produced at Exh.13 read with his detailed data produced at Exh.14 would indicate that the total yield of paddy crop was 5500 Kgs. per hectare. In absence of any evidence having been led by the appellants, this Court is of the opinion that it would be in the interest of justice to hold that the yield of paddy crop was 4500 Kgs. per hectare. Having regard to the evidence adduced by the claimants, no error is committed by the reference Court in holding that the price of paddy in the year 1998 was Rs.350/- per 100 Kgs. If the price prevailing at the relevant time is taken into consideration, the total income from paddy crop would come to Rs.15,750/- per hectare. As held earlier, the claimants would be entitled to the income derived from millet crop which is determined at Rs.8750/- per hectare. Taking into consideration the two patterns of crops, the total income would come to Rs.58,250/- and in order to derive the average yield of two patterns of crops, it would be necessary to divide the said figure by 2, which would indicate that the average income on yield basis was Rs. 29,125/- per hectare.

13. In view of the decisions of the Supreme Court in (i) Special Land Acquisition Officer, Davangere (supra) and (2) State of Gujarat v. Rama Rana (supra), 50% of the value of the crop will have to be deducted towards costs for raising crop etc. and, therefore, if 50% is

deducted from Rs.29,125/-, the market value of the lands acquired, on yield basis, would come to Rs.14,562/- per hectare i.e. Rs.1.45 Ps. per sq.mt. The Supreme Court in the above-referred to two decisions has authoritatively laid down that while determining market value of the lands acquired on yield basis, multiplier of 10 should be adopted. If the said multiplier is adopted, the total market value of the agricultural lands acquired from village Nanadara, would be Rs.14.57 per sq.mt. Meaning thereby, the claimants would be entitled to an additional amount of compensation at the rate of Rs.1/per sq.mt. and to that extent, cross-objections filed by them will have to be accepted. The above discussion makes it evident that no error worth the name is committed by the reference Court in determining the market value of the agricultural lands acquired on yield basis and, therefore, the appeals filed by the acquiring body and the State Government cannot be accepted and they are liable to be dismissed.

14. From the impugned award, this Court finds that the reference Court has not awarded interest on the amount payable under Sections 23(1-A) and 23(2) of the Act. The Supreme Court in (i) Sunder v. Union of India, 2001(3) G.L.H. 446, and (ii) Nagpur Improvement Trust v. Vasant Rao & Ors. 2003(1) G.L.H. 140, has held that a claimant is entitled to interest on the amount awarded under Sections 23(1-A) and 23(2) of the Act. Therefore, it will have to be held that the claimants in these cases would also be entitled to receive interest on the amount awarded under Sections 23(1-A) and 23(2) of the Act.

For the foregoing reasons, First Appeal Nos.5581 of 1998 to 5583 of 1998 fail and are dismissed. The Cross-Objections filed by the claimants are accepted in part and it is held that the claimants would be entitled to additional compensation at the rate of Rs.1/- per sq.mt. over and above the compensation which is determined by the reference Court at the rate of Rs.13.50 Ps. per sq.mt. It is further held that the claimants would be entitled to interest on the amount awarded under Sections 23(1-A) and 23(2) of the Act. Rest of the directions given in the Award are hereby upheld. There shall be no orders as to costs. The Office is directed to draw award in terms of this judgment.

(patel) ( J.M.Panchal, J.)(Sharad D.Dave,J.)